

REMARKS

Claims 1-13 and 15-44 are pending in the application. Claim 15 was objected to under 37 C.F.R. § 1.75(c) and rejected under 35 U.S.C. § 112, first paragraph; claims 1, 9-13, 15, and 37 were rejected under 35 U.S.C. § 112, first paragraph; claims 1-13, 15-17, 20, 23, 24, 27, 30, 31, 34, 37-39, and 42 were rejected under 35 U.S.C. § 103(a); and claims 10-12, 23, 24, and 27 were rejected under the judicially-created Doctrine of Obviousness-Type Double Patenting. Claims 4, 5, 7, 8, 18, 19, 21, 22, 25, 26, 28, 29, 32, 33, 35, 36, 40, 41, 43, and 44 were objected to for depending from rejected claims, but would be allowable if rewritten.

In the interest of expediting prosecution, the claims have now been amended so that those claims indicated by the Examiner as being allowable if rewritten have been rewritten. In particular, claim 4 has been rewritten to be an independent claim, and all of the remaining claims now depend from claim 4. Thus, Applicants submit that the claims are in condition for allowance. Applicants reserve the right to pursue the original or similar claims in further applications. In the interest of completion, each of the objections and rejections are addressed briefly below.

Objection under 37 C.F.R. § 1.75(c)

Claims 15 was objected to under 37 C.F.R. § 1.75(c) as being of improper dependent form, on the basis that it fails to further limit the subject matter of the claim from which it depends (claim 1). Claim 1 has been canceled and its limitations have been incorporated into claim 4, from which claim 15 now depends. Claim 4 specifies the nucleic acid molecule previously recited in claim 4, as well as the complement of this nucleic acid molecule. Claim 15

has now been amended to delete the phrase “or the complement thereof” and, thus, limits the subject matter of claim 4. Applicants thus request that this objection be withdrawn.

Rejection under 35 U.S.C. § 112, second paragraph

Claim 15 was also rejected under 35 U.S.C. § 112, second paragraph, on the basis that it is not clear to what the phrase “the complement thereof” refers. This rejection has been met by the present amendment to claim 15, by which this phrase has been removed from the claim. As is noted above, claim 4 includes reference to a complement, but makes it clear that the complement is of the nucleic acid molecule specified earlier in the claim.

Rejection under 35 U.S.C. § 112, first paragraph

Claims 1-13 were rejected under § 112, first paragraph, with the Examiner stating that, while enabling attenuating mutations at positions 107, 316, and 440 of the envelope protein, the specification does not enable each and every mutation within the ranges of 102-112, 311-321, and 435-445. As is noted above, in the interest of expediting prosecution, the claims have been amended to specify subject matter indicated by the Examiner to be allowable. Thus, Applicants request that this rejection be withdrawn.

Rejection under 35 U.S.C. § 103(a)

Claims 1-13 were rejected under § 103(a) for obviousness over Guirakhoo et al., Virology 257:363-372, 1999; Poidinger et al., Virology 218:417-421, 1996; Yang et al., J. Inf. Dis. 184:809-816, 2001; and Allison et al., J. Virol. 75:4268-4275, 2001. As is noted above, in the

interest of expediting prosecution, the claims have been amended to specify subject matter indicated by the Examiner to be allowable. Thus, Applicants request that this rejection be withdrawn. Applicants respectfully request that this rejection be withdrawn.

Double Patenting Rejection

Claims 10-12, 23, 24, and 27 were rejected under the judicially-created Doctrine of Obviousness-type double patenting over claims 1, 8, and 9 of U.S. Patent No. 6,878,372 and, apparently, at least some of the references cited in the rejection under § 103(a). The present claims specify the presence particular mutations within the West Nile virus envelope protein, and such mutations are not described or suggested in the '372 patent. Further, Applicants note that the claims have been amended to specify subject matter indicated by the Examiner to be allowable. Thus, Applicants request that this rejection be withdrawn.

CONCLUSION

Applicants submit that the claims are in condition for allowance, and such action is respectfully requested. If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

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Susan M. Michaud
Susan M. Michaud, Ph.D.
Reg. No. 42,885

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045